

(3) It is essential to have an approved first article to serve as a manufacturing standard.

### Subpart 209.4—Debarment, Suspension, and Ineligibility

#### 209.402 Policy.

(d) The uniform suspension and debarment procedures to be followed by all debarring and suspending officials are set out in appendix H to this chapter.

(e) The department or agency shall provide a copy of the Debarment and Suspension Procedures at DFARS appendix H to this chapter to contractors at the time of their suspension or when they are proposed for debarment, and upon request to other interested parties.

[59 FR 27668, May 27, 1994]

#### 209.403 Definitions.

*Debarring official.* (1) For DoD, the designees are—

Army—Commander, U.S. Army Legal Services Agency

Navy—the General Counsel of the Department of the Navy

Air Force—Deputy General Counsel (Contractor Responsibility)

Defense Advanced Research Projects Agency—The Director

Defense Information Systems Agency—The General Counsel

Defense Logistics Agency—The Special Assistant for Contracting Integrity

National Imagery and Mapping Agency—The General Counsel

Defense Threat Reduction Agency—The Director

National Security Agency—The Director

Ballistic Missile Defense Organization—The General Counsel

Overseas installations—as designated by the agency head

(2) Overseas debarring officials—

(i) Are authorized to debar or suspend contractors located within the official's geographic area of responsibility under any delegation of authority they receive from their agency head.

(ii) Debar or suspend in accordance with the procedures in FAR subpart 9.4 or under modified procedures approved by the agency head based on consideration of the laws or customs of the foreign countries concerned.

(iii) In addition to the bases for debarment in FAR 9.406–2, may consider the following additional bases—

(A) The foreign country concerned determines that a contractor has engaged in bid-rigging, price-fixing, or other anti-competitive behavior; or

(B) The foreign country concerned declares the contractor to be formally debarred, suspended, or otherwise ineligible to contract with that foreign government or its instrumentalities.

[56 FR 36313, July 31, 1991, as amended at 56 FR 67212, Dec. 30, 1991; 59 FR 27669, May 27, 1994; 60 FR 61593, Nov. 30, 1995; 61 FR 50452, Sept. 26, 1996; 63 FR 11528, Mar. 9, 1998; 64 FR 51075, Sept. 21, 1999]

#### 209.405 Effect of listing.

Under 10 U.S.C. 2393b, when a department or agency determines that a compelling reason exists for it to conduct business with a contractor that is on the list of parties excluded from procurement programs, it shall provide written notice of the determination to the General Services Administration, Office of Acquisition Policy. Examples of compelling reasons are—

(1) Only a listed contractor can provide the supplies or services;

(2) Urgency requires contracting with a listed contractor;

(3) The contractor and a department or agency have an agreement covering the same events which resulted in the listing and the agreement includes the department/agency decision not to debar or suspend the contractor; or

(4) The national defense requires continued business dealings with the listed contractor.

#### 209.405–1 Continuation of current contracts.

(b) Unless the agency head makes a written determination that a compelling reason exists to do so, ordering activities shall not—

(i) Place orders exceeding the guaranteed minimum under indefinite quantity contracts; or

(ii) When the agency is an optional user, place orders against Federal Supply Schedule contracts.

(c) This includes exercise of options.

[60 FR 29497, June 5, 1995, as amended at 60 FR 61593, Nov. 30, 1995]